



Order 97-6-14

Served: June 16, 1997

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 21st day of May, 1997

Application of

AIR HOLLAND CHARTER B.V.

for a foreign air carrier permit under
49 U.S.C. section 41301

Docket OST-96-1986

ORDER ISSUING FOREIGN AIR CARRIER PERMIT

Summary

This order issues a foreign air carrier permit to Air Holland Charter B.V., to engage in charter foreign air transportation of persons, property and mail between the Netherlands and the United States pursuant to the bilateral aviation undertakings of the United States and the Netherlands.

Application

By application filed November 25, 1996, Air Holland requests that we issue it a foreign air carrier permit to conduct charter operations between the Netherlands and the United States consistent with the provisions of the open-skies aviation agreement between the United States and the Netherlands.¹

Air Holland states that it has been designated by the Government of the Netherlands to perform the proposed services; it is substantially owned and effectively controlled by citizens of the Netherlands; and it is operationally and financially fit to perform the proposed services.

¹ Air Holland holds Department exemption authority, granted December 6, 1996, and confirmed by Order 96-12-37 (Docket OST-96-1987), to engage in charter services identical to those at issue here.

No answers were filed in response to Air Holland's permit application.

Decision

We have reviewed the record in this case, which is summarized in the attachment to this order, and have decided to grant the application using simplified Subpart Q procedures.² The public was informed of the application by notice in the Federal Register and the Department's published weekly list of applications filed.³ The notice described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of the authority. Simplified procedures are appropriate in this case, because there are no material determinative issues of fact requiring other procedures.

We find that grant of this foreign air carrier permit is in the public interest, and that Air Holland is qualified to conduct the proposed operations.

Public Interest Considerations

During 1992, the United States and the Netherlands signed a Memorandum of Consultations amending the 1978 U.S.-Netherlands Air Transport Agreement to incorporate all of the basic elements of an open-skies agreement (the Agreement). The Agreement provides broad rights for the designated carriers of each side, including rights to conduct the charter services proposed by Air Holland.⁴

Operational and Financial Fitness

We find that Air Holland is operationally and financially fit to conduct the operations at issue here. Air Holland was formed under the laws of the Netherlands and has conducted commercial operations throughout Europe since 1991.⁵ Air Holland has experienced management, and has had no safety violations, fatal accidents or tariff violations in the last five years.⁶ Air Holland has been designated by its government and holds effective authority from its homeland to conduct the proposed operations.⁷ The FAA's International Liaison Staff (AFS-50) has advised us that it knows of no reason why Air Holland's request for a foreign air carrier permit should not be

² 14 CFR 302.1701 et seq. Under Rule 29(b), we may, in our discretion, omit a tentative decision in proceedings under Subpart Q and proceed directly to a final decision.

³ 61 FR (64944), December 9, 1996.

⁴ See U.S.-Netherlands Air Transport Agreement, as amended by the 1978 Protocol to the Agreement and by the September 4, 1992, Memorandum of Consultations (1992 MOC).

⁵ A predecessor corporation, Air Holland N.V., previously held Department exemption authority. See Orders 90-5-31 and 91-8-2, Docket 46808. That authority expired by its own terms and was not renewed by Air Holland N.V. We subsequently dismissed as moot a foreign air carrier permit application filed by Air Holland. See Order 95-9-25, Docket 46684.

⁶ Air Holland states that its charter operations to and from the United States will be operated with B-757 aircraft (PH-AHE and PH-AHI) which will be maintained by its own personnel pursuant to an airworthiness program approved by the Dutch aeronautical authorities. Additional maintenance will be performed under contract with accredited repair stations.

⁷ By diplomatic note (No. VA/142073) dated December 5, 1996, the Government of the Netherlands designated Air Holland to perform charter services under the Agreement.

approved.⁸ Finally, Air Holland has provided financial information which indicates that it can conduct the proposed services without jeopardizing passenger or shipper funds.

Ownership and Control

We find that Air Holland is substantially owned and effectively controlled by citizens of the Netherlands.⁹ All of Air Holland's officers, directors and key management personnel are citizens of the Netherlands.

In view of the foregoing, and all the facts of record, we find and conclude that:

1. It is in the public interest to issue Air Holland Charter B.V. a foreign air carrier permit in the form attached;
2. Air Holland Charter B.V. is fit, willing and able properly to perform the foreign air transportation described in the attached permit and to conform to the provisions of the Act, and to our rules, regulations, and requirements;
3. The public interest requires that the exercise of the privileges granted by the permit should be subject to the terms, conditions, and limitations contained in the attached permit, and to such other reasonable terms, conditions, and limitations required by the public interest as we may prescribe;
4. The issuance of this foreign air carrier permit will not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975, as defined in section 313.4(a)(1) of our Regulations;¹⁰ and
5. The public interest does not require an oral evidentiary hearing on the application.

ACCORDINGLY,

1. We issue, in the form attached, a foreign air carrier permit to Air Holland Charter B.V. authorizing it to engage in charter foreign air transportation of persons, property and mail between any point or points in the Netherlands; via intermediate points; and any point or points in the United States; and beyond; and to perform other charters in accordance with Part 212 of the Department's rules;
2. The exercise of the privileges granted above is subject to Air Holland Charter B.V.'s compliance with the conditions listed in Attachment A;
3. To the extent not granted, we deny all requests for relief in Docket OST-96-1986;

⁸ A copy of the FAA's January 2, 1997, memorandum has been placed in Docket OST-96-1986.

⁹ All of Air Holland's capital stock is held by Air Holland Finance B.V., a Dutch company. All of the shareholders of Air Holland Finance are Dutch citizens.

¹⁰ This finding is based on the fact that the grant of this permit will not result in a near-term increase in fuel consumption in excess of 10 million gallons.

4. Unless disapproved by the President of the United States under section 41307 of Title 49 of the U.S. Code, this order and the attached permit shall become effective on the 61st day after its submission for section 41307 review, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove the Department's order under that section, whichever occurs earlier;¹¹ and

5. We will serve a copy of this order on Air Holland Charter B.V.; the Ambassador of the Netherlands in the United States; the Department of State (Office of Aviation Negotiations) and the Federal Aviation Administration (New York IFO).

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

¹¹ This order was submitted for section 41307 review on May 21, 1997. On June 10, 1997, we received notification that the President's designee, under Executive Order 12597 and implementing regulations, did not intend to disapprove the Department's order.

SUMMARY

FOREIGN AIR CARRIER PERMIT APPLICATION Docket OST-96-1986

Air Holland Charter B.V.

Flag: The Netherlands

Federal Register Notice: 61 FR (64944), December 9, 1996

Filing Date: November 25, 1996

Authority Sought: Initial foreign air carrier permit to engage in charter foreign air transportation of persons, property and mail consistent with the provisions of the open- skies aviation agreement between the United States and the Netherlands.

Pleadings: No answers were filed in response to Air Holland's application.

Public Interest: During 1992, the United States and the Netherlands signed a Memorandum of Consultations amending the 1978 U.S.-Netherlands Air Transport Agreement to incorporate all of the basic elements of an open-skies agreement (the Agreement). The Agreement provides broad rights for the designated carriers of each side, including rights to conduct the charter services proposed by Air Holland.

Fitness: Air Holland Charter B.V. has been conducting commercial operations throughout Europe since 1991. Air Holland obtained Department exemption authority on December 6, 1996, to perform charter foreign air transportation of persons, property and mail identical to the authority at issue here. That authority was subsequently confirmed by Order 96-12-37 (Docket OST-96-1987).

A predecessor corporation, Air Holland N.V., previously held Department exemption authority. See Orders 90-5-31 and 91-8-2, Docket 46808. That authority expired by its own terms and was not renewed by Air Holland N.V. We subsequently dismissed as moot a foreign air carrier permit application filed by Air Holland. See Order 95-9-25, Docket 46684.

Air Holland holds appropriate licenses from its government and has had no safety violations or fatal accidents in the last five years. Air Holland has experienced management and appears financially sound:

	Financial Indicators	
(\$ millions)		
year ending March 31	<u>1996</u>	<u>1995</u>
Total Assets	38.9	43.4
Total Liabilities	35.5	40.2
Owner's Equity	3.4	3.2
Operating Profit or (Loss)	.3	(3.9)

DOT verifies compliance with 14 CFR Parts 203 (Warsaw liability waiver), 205 (Insurance requirements) and 129 (FAA Operations Specifications).

Ownership and Control: Air Holland is a Dutch corporation, wholly owned by Dutch nationals. All of Air Holland's capital stock is held by Air Holland Finance B.V., a Dutch company. All of the shareholders of Air Holland Finance are Dutch citizens. In addition, all of Air Holland's key management personnel are citizens of the Netherlands.

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

PERMIT TO FOREIGN AIR CARRIER

AIR HOLLAND CHARTER B.V.

A Flag Carrier of the Netherlands

is authorized, subject to the following provisions, the provisions of Title 49 of the U.S. Code and the orders, rules, and regulations of the Department of Transportation, to engage in charter foreign air transportation of persons, property and mail, as follows:

**Between any point or points in the Netherlands; via intermediate points
and any point or points in the United States; and beyond.**

In the conduct of charter operations authorized above, the holder may, without prior Department approval, carry charter traffic between the United States and a third country point, provided that such charter traffic is carried on a flight that serves the Netherlands for purposes of carrying traffic between the United States and the Netherlands.

The holder shall also be authorized to engage in other charter trips in foreign air transportation, subject to the terms, conditions, and limitations of the Department's regulations governing charters.

This permit and the exercise of the privileges granted in it shall be subject to the terms, conditions and limitations in both the order issuing this permit and the attachment to this order, and to all applicable provisions of any treaty, convention or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and the holder's homeland are or shall become parties.

This permit shall be effective on June 10, 1997. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention or agreement, this permit shall terminate (1) upon the dissolution or liquidation of the holder to whom it was issued; (2) upon the effective date of any treaty, convention, or agreement or amendment, which shall have the effect of eliminating the bilateral right for the service authorized by this permit from the service which may be operated by airlines designated

by the Government of the Netherlands (or, if the right is partially eliminated, then the authority of this permit shall terminate in like part); (3) upon the effective date of any permit granted by the Department to any other carrier designated by the Government of the Netherlands in lieu of the holder; or (4) upon the termination or expiration of the applicable air services agreement between the United States and the Netherlands. However, clause (4) of this paragraph shall not apply if prior to such termination or expiration, the foreign air transportation authorized herein becomes the subject of another treaty, convention or agreement to which the United States and the Netherlands become parties.

The Department of Transportation has executed this permit and affixed its seal on June 10, 1997.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

Appendix A
CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
 - (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or
 - (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;

(10) If charter operations are authorized, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and

(11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).

(41301/40109) 12/96